IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE J.CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE D.APPA RAO

WP No. 7054 of 2006

Between :

Mrs.Nasrin Usman Sahiwala .. Petitioner

And

Principal Secretary (Political),
General Administration Department,
Specially Empowered Officer under
COFEPOSA Act,
Government of Andhra Pradesh,
Secretariat, Hyderabad and three others .. Respondents

WP No. 7067 of 2006

Between :

Mrs.Famida Yousuf Kalwa .. Petitioner

And

Principal Secretary (Political),
General Administration Department,
Specially Empowered Officer under
COFEPOSA Act,
Government of Andhra Pradesh,
Secretariat, Hyderabad and three others .. Respondents

Dated : 3rd July, 2006

ORDER : (per JC,J)

These two writ petitions are in a way inter-connected.

The petitioner's husband (in W.P.No. 7054 of 2006) was scheduled to travel by OMAN AIR by Flight No.WY 836 scheduled to departure from Hyderabad on 29.12.2005. On receipt of intelligence that an Olive Green suitcase was checked into the said flight with huge amounts of currency, both Indian and foreign of various denominations of various countries in contravention of the various provisions of law. The Customs authorities recovered a suitcase which was already checked in the above mentioned flight and came to the conclusion that the petitioner herein is the passenger who checked in the said suitcase. The case of the petitioner is obviously one of denial, the details of which may not be relevant for the purpose of this order in view of a limited question of law that is argued. But, for the sake of the completion of narration of facts we must record that it is the case of the Revenue that the petitioner was carrying on the said suitcase to be handed over to the petitioner in the other writ petition, who was scheduled to travel on the same day by Indian Airlines flight to Dubai via Muscat.

The 1st respondent passed two orders of detention dated 10.1.2006 and 21.1.2006 respectively against the detenues in exercise of the powers conferred under section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1944 (for short `the Act'). Consequently, the detenues were arrested and admittedly they are lodged in Chanchalguda Prison, Hyderabad and hence the present writ petitions.

Though various grounds are raised attacking the order of detention, the learned counsel for the petitioners Sri Pandurang focused his argument mainly on one ground i.e., that the order of detention in each of these writ petitions is passed by an officer empowered under Section 3(1) of the above mentioned Act, though he

indicated in the order that a representation would lie to him against the order of detention and also to Government of India, he failed to mention that a representation would also lie to the State of Andhra Pradesh and consequentially there is a failure to comply with the requirement of law settled by long line of authorities of the Supreme Court to the effect that non mention of right to representation to various authorities in the detention order would itself vitiate the detention order. The detention order insofar as it is relevant for the present purpose reads as follows :

> "32. The above grounds communicated to you are in pursuance of Clause (5) of Article 22 of the Constitution of India. You are informed that you have right to make a representation in writing against the order of detention either to the detaining authority i.e., Principal Secretary (Political), Government of Andhra Pradesh, General Administration Department, 6th floor, `C' Block, A.P. Secretariat, Hyderabad – 500 022, or Central Government i.e., Secretary to Government of India, Ministry of Finance, Department of Revenue, Central Economic Intelligence Bureau, 6th floor, "B" Wing, Janapath Bhawan, New Delhi – 110 001 or the Chairman, State Advisory Board on Preventive Detentions, Plot No.112-A, MLA's Colony, Road No.12, Banjara Hills, Hyderabad – 500 034 as the case may be or to all the authorities through the Superintendent, Central Prison, Hyderabad. Any representation that is made by you to the detaining authority or the State Government will be duly considered and will also be placed before the Advisory Board on Preventive Detentions. Any representation made by you to the Central Government will be forwarded to them for their consideration. You are also informed that you are entitled

> to be heard in person by the Advisory Board and that you have a right to make a written representation without prejudice to your right for the personal hearing by the Advisory Board. You are also informed that you can take the assistance of any person other than a lawyer, if you so desire, at the time of personal hearing before the Advisory Board and that it is for you to keep the person ready at the time of the Advisory Board meet to consider your case."

The language of the detention order in both the writ petitions is identical and there is no dispute about that. It can be seen from the above extracted portion of the detention order that the order indicates that a representation in writing against the detention order to the detaining authority i.e., the Principal Secretary, Political, Government of Andhra Pradesh, General Administration Department or Central Government i.e., Secretary to Government of India, Ministry of Finance, Department of Revenue, Central Economic Intelligence Bureau could be made apart from the Advisory Board. There is no mention of the fact that a representation could also be made to the State of Andhra Pradesh. Section 3(1) reads as follows :

> **"3. Power to make orders detaining certain persons .- (1)** The Central Government or the State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person (including a foreigner), that, with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of

foreign exchange or with a view to preventing him from -

(i) smuggling goods, or

(ii) abetting the smuggling of goods, or

(iii) engaging in transporting or concealing or keeping smuggled goods, or

(iv) dealing in, smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods, or

(v) harbouring persons engaged in smuggling goods or in abetting the smuggling of goods,

it is necessary so to do, make an order directing that such person be detained :

Provided that no order of detention shall be made on any of the grounds specified in this sub-section on which an order of detention may be made under section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 or under section 3 of the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988."

It can be seen from the language of the section that the authority to detain a person with a view to prevent the person from indulging in various activities enumerated in Section 3 is conferred upon three bodies. (i) The Central Government (ii) the State Government or (iii) any officer of the Central Government or State Government specially empowered for the purpose of the section by the appropriate government.

Section 11 of the Act authorizes the revocation of a detention order by the various authorities specified therein. The ambit of this Section fell for the consideration of the Supreme Court in

Kamleshkumar Ishwardas Patel v. Union of India[1]**.** A Constitution Bench of the Supreme Court discussed the scope of Section 11 and came to a conclusion (1) that when an order of detention is passed by the State Government, both the State Government as well as the Central Government have the power to revoke the orders. (2) When an order of detention is passed by the Central Government, only the Central Government has the power to revoke the orders and (3) When an order of detention is passed by a specially empowered officer of the State Government, both the State and Central Government have the power to revoke apart from the fact that the specially empowered officer has an inherent power to revoke the order in view of Section 21 of the General Clauses Act and (4) when an order of detention is passed by a specially empowered officer of the Central Government, both such officer and the Central Government would have the power to revoke the detention order. The Supreme Court further came to the conclusion depending upon the fact that as to which one of the authorities passed the detention order, the detention order must specify as to the various authorities to which a representation would lie and non indication of even one authority to which a representation would lie would vitiate the detention order.

In the present case, as already noticed the order is passed by the specially empowered officer of the State of Andhra Pradesh. The detention order does not indicate that a representation would lie to the State of Andhra Pradesh. Therefore, we are of the opinion that in view of the law laid down by the Supreme Court, there is a clear breach of legal obligation on the part of the detaining authority vitiating the order of detention.

However, the learned Advocate General placed reliance on a judgment of the Supreme Court in **Rajan Worlikar v. State of**

Karnatakam[2] and argued that the orders of detention in these two cases were passed by the Principal Secretary to the Government of Andhra Pradesh and the indication in the detention order that such a representation would lie to the detaining authority i.e., the Principal Secretary would in substance mean that a representation would lie to the State of Andhra Pradesh.

The case relied upon by the learned Advocate General is a case where the detention order was passed by the empowered officer under Sectlion 3 of the Act of the State of Karnataka, but the detention order in that case came to be passed by the officer not in his capacity as Empowered Officer, but acting for the government. The detention order clearly indicates that the order of detention was being passed by and on behalf of the Governor of Karnataka and the detention order having indicated that a representation would lie to the detaining authority, the Supreme Court came to a conclusion that there was no breach of the requirement of the law as the detention order was passed by the State and not by the Secretary in his capacity as empowered officer.

But in the present case, the detention order does not make any reference to the authority of the State to pass such an order under section 3. It's an order very clearly passed by the Specially Empowered Officer without any reference to the government. On the other hand, it is categorically stated in the detention order at para 32 extracted above "that a representation in writing against the order of detention either to the ***detaining authority*** i.e., the Principal Secretary, Political, Government of Andhra Pradesh, General Administration Department or the Central Government …." would lie clearly indicates that the detaining officer is conscious of the fact that he was not passing the order on behalf of the government, but not in his capacity

as detaining officer specially empowered under Section 3 of the Act.

For the reasons mentioned above, we have no option but to hold that the orders of detention are vitiated. In view of such conclusion, we do not propose to examine various other grounds urged by the petitioners in these writ petitions. The writ petitions are accordingly allowed.

JUSTICE J.CHELAMESWAR

Knk
Dt : 3.7.2006

JUSTICE D.APPA RAO

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[1] **1995 SCC (Crl) 643 : (1995) 4 SCC 51**

[2] (2001) 5 SCC 295